



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 21, 1995

Mr. C. Ed Davis
Deputy Administrator for Legal Affairs
Texas Employment Commission
101 East 15th Street
Austin, Texas 78778-0001

OR95-141

Dear Mr. Davis:

You ask that this office reconsider its determination in Open Records Letter No. 94-530 (1994). In that ruling, we concluded that the Texas Employment Commission (the "commission") had not met its burden under section 552.103 of the Government Code to establish that the requested information related to pending or reasonably anticipated litigation. We also concluded that the requested information was not excepted by section 552.111 of the Government Code.¹

In your original request to this office, you claimed that "[s]ince [you] have previously summoned the police to deal with [the requestor] and have threatened to file charges, and since [the requestor] has frequently invoked the prospect of an EEOC complaint on his part, Sec. 552.103 is also applicable." We concluded, in Open Records Letter No. 94-530, that the mere contemplation of future litigation by the commission was not sufficient to invoke section 552.103. See Open Records Decision No. 557 (1990). We further stated that although an EEOC complaint might reasonably be anticipated, you did not explain how the requested information related to such a complaint.

In your request for reconsideration, you contend that "[t]he memorandum not only sums up the purported grounds of [the requestor's] complaint; it actually constitutes part of those grounds." You did not, however, make this assertion in your original request.

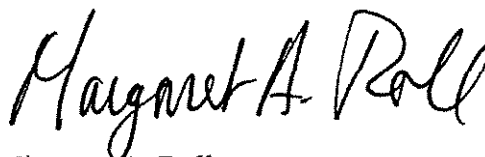
¹As you do not question the denial of your section 552.108 claims in Open Records Letter No. 94-530, we will not reconsider that portion of the ruling.

The Open Records Act places on a governmental body the burden of establishing why and how an exception applies to requested information. Open Records Decision Nos. 542 (1990); 532 (1989); 515 (1988). The commission did not meet its burden of establishing why and how section 552.103 applied to the requested information in its original request. Accordingly, the information is presumed to be public. As you have not submitted compelling reasons to overcome this presumption, such as confidentiality under another source of law or third party privacy interests, we uphold our original determination concerning the applicability of section 552.103 of the Government Code.

You have also questioned our determination as to the applicability of section 552.111. You claim that the "consideration of denying Federally-mandated services and pressing criminal charges because of repeated disruptive behavior on the part of a citizen in a public office can hardly be seen as anything but the deliberation and policymaking processes necessary prior to taking action." The memorandum submitted for our review is little more than a narrative of the events that occurred concerning the requestor. Although there are some personal opinions expressed concerning the staff's feelings towards the requestor and his alleged actions, there are no recommendations, advice, or opinions expressed regarding the action that should be taken by the commission. Accordingly, we uphold our prior determination that the memorandum does not constitute material reflecting the deliberative or policymaking process of the commission. You must release the memorandum in its entirety to the requestor.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is fluid and cursive, with the first name "Margaret" and last name "Roll" being the most prominent parts.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/LBC/rho

Ref.: ID# 28909
Open Records Letter No. 94-530

Enclosures: Submitted documents

cc: Mr. Ronald R. Green
Route 2, Box 110
Sweetwater, Texas 79556
(w/o enclosures)